

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
Citizenship and Immigration Services
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

L2

FILE:

MSC 01 347 60255

Office: NEW YORK

Date:

MAR 23 2009

IN RE:

Applicant:

APPLICATION:

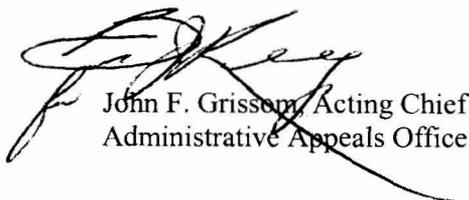
Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.


John F. Grisson, Acting Chief
Administrative Appeals Office

DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the Director, New York, New York. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant failed to demonstrate that he entered the United States before January 1, 1982, and resided in a continuous unlawful status through May 4, 1988.

On appeal, the applicant asserts that he has submitted sufficient evidence in the form of affidavits to establish the requisite continuous residence. The applicant does not submit additional evidence on appeal.

Section 1104(c)(2)(B) of the LIFE Act states:

(i) In General – The alien must establish that the alien entered the United States before January 1, 1982, and that he or she has resided continuously in the United States in an unlawful status since such date and through May 4, 1988. In determining whether an alien maintained continuous unlawful residence in the United States for purposes of this subparagraph, the regulations prescribed by the Attorney General under section 245A(g) of the Immigration and Nationality Act (INA) that were most recently in effect before the date of the enactment of this Act shall apply.

An applicant for permanent resident status under section 1104 of the LIFE Act has the burden to establish by a preponderance of the evidence that he or she has resided in the United States for the requisite periods, is admissible to the United States and is otherwise eligible for adjustment of status under this section. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.12(e).

The “preponderance of the evidence” standard requires that the evidence demonstrate that the applicant's claim is “probably true,” where the determination of “truth” is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is “probably true” or “more likely than not,” the applicant has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining “more likely than not” as a greater than 50 percent probability of

something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application.

Although the regulations provide an illustrative list of contemporaneous documents that an applicant may submit, the list also permits the submission of affidavits and any other relevant document. *See* 8 C.F.R. § 245a.2(d)(3)(vi)(L).

The regulation at 8 C.F.R. § 245a.2(d)(3)(i) states that letters from employers attesting to an applicant's employment must: provide the applicant's address at the time of employment; identify the exact period of employment; show periods of layoff; state the applicant's duties; declare whether the information was taken from company records; and identify the location of such company records and state whether such records are accessible or in the alternative state the reason why such records are unavailable.

In the Notice of Intent to Deny (NOID), dated September 24, 2007, the director requested that the applicant submit evidence of his entry into the United States before January 1, 1982, and sufficient evidence demonstrating his continuous unlawful residence in the United States from before January 1, 1982 through May 4, 1988. The director noted that the applicant claimed at his interview that since his entry into the United States on July 25, 1981, he departed once, to Canada on June 1, 1987, and returned to the United States on July 15, 1987. The director determined after examining the evidence that the applicant cannot establish the requisite continuous residence. The director granted the applicant thirty (30) days to submit additional evidence.

In the Notice of Decision, dated January 22, 2008, the director denied the instant application **based on the reasons stated in the NOID**. The director noted that the applicant submitted additional affidavits, however, the evidence submitted failed to overcome the reasons for denial stated in the NOID.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to demonstrate his continuous residence in the United States in an unlawful status, and his physical presence, during the requisite period. In an attempt to establish continuous unlawful residence in the United States during the requisite period in this country since prior to January 1, 1982, the applicant submitted various affidavits and letters as evidence to support his Form I-485 application. The AAO has reviewed the entire record. Here, the submitted evidence is neither probative, nor credible.

Contrary to applicant's assertion, he has submitted questionable documentation. The applicant has provided affidavits and letters attesting to his continuous residence in the United States throughout the requisite period. Also, on his Form I-687 application, the applicant stated that since his arrival in 1981, he had departed the United States once, for Canada, on June 1, 1987 and returned to the United States on July 15, 1987. However, it is clear from the record of

proceedings that the applicant's seaman's book reflects that he received a "Certificate of the Competency held" showing that he was issued Grades on July 8, 1984, and October 21, 1987, in Chittagong Port. In addition, the seaman's book reveals numerous travel stamps for the applicant, including a June 8, 1983 stamp at the international airport, Dhaka, Bangladesh; stamps indicating arrival in Augusta, on February 3, 1982, and a departure on February 6, 1982; the applicant boarded the [REDACTED] at Chittagong port on June 10, 1984; and, several additional arrival and departure stamps including stamps on May 25, 1984, May 28, 1984, January 5, 1986, and June 22, 1986. Clearly, this evidence contradicts the applicant's Form I-687 application, and his supporting documentation, including the affidavits and letters the applicant submitted.

The above discrepancies cast considerable doubt on whether the applicant resided in the United States from 1981 as he claimed. Doubt cast on any aspect of the applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988). The applicant has failed to submit any objective evidence to explain or justify the discrepancies in the record. Therefore, the reliability of the remaining evidence offered by the applicant is suspect.

Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the applicant's reliance upon documents with minimal probative value, it is concluded that he has failed to establish continuous residence in an unlawful status in the United States from prior to January 1, 1982, through May 4, 1988.

Therefore, based on the above, the applicant has failed to establish entry into the United States prior to January 1, 1982, and continuous unlawful residence through May 4, 1988, as required under Section 1104(c)(2)(B) of the LIFE Act. Given this, he is ineligible for permanent resident status under Section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.